



Economic Impact Analysis Virginia Department of Planning and Budget

12 VAC 5-612 – Regulations for Onsite Sewage Indemnification Fund
Virginia Department of Health
January 9, 2009

Summary of the Proposed Amendments to Regulation

Per Virginia Code § 32.1-164.1:01, the Onsite Sewage Indemnification Fund's purpose is to assist any Virginia real property owner holding a valid permit to operate an onsite sewage system when such system or components thereof fail within three years of construction and such failure results from the negligence of the Department of Health (Department). Currently, the fund is administered in accordance with a guidance document issued by the Department. This document establishes the application procedure for property owners to apply for assistance from the fund and establishes the procedure for investigating and processing requests for assistance from the fund. Additionally, it specifies what information must be included and which actions the owner must take in order to file a complete application for assistance from the fund.

The Board of Health (Board) proposes to incorporate the provisions of the guidance document into new regulations. Also, the proposed regulations would add a new provision which allows individuals who demonstrate a financial inability to repair the onsite sewage system to receive financial assistance before the onsite sewage system is repaired. Individuals who have the financial ability to repair the onsite sewage system must apply for assistance in the form of a reimbursement after the repairs are complete.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Establishing the procedures and rules within the guidance document in regulation will be beneficial in that the public will have a clearly outlined and consistent evaluation process for

considering reimbursement requests. Since guidance documents do not have the same binding legal authority as regulations, according to the Department property owners seeking assistance from the Fund have, in some cases, endured a long, unpredictable review process. Specifically, cases with similar facts have had different outcomes depending on the individual members of the Sewage Handling and Disposal Appeal Review Board's willingness to adhere to the procedures and rules within the guidance document that did not carry the force of law. The Department expects that there will be more consistency and less delay with the procedures and rules in regulation.

The proposed new provision which allows individuals who demonstrate a financial inability to repair the onsite sewage system to receive financial assistance before the onsite sewage system is repaired will clearly be beneficial for such individuals without producing significant costs. Thus a net benefit will be created.

Businesses and Entities Affected

The proposed amendments affect Virginia real property owners with an onsite sewage system that fails within three years of its construction date and who believe the failure is due to the negligence of the Department. The Department estimates that there are 24 to 30 such cases per year.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed regulations are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property

The proposal to allow individuals who demonstrate a financial inability to repair the onsite sewage system to receive financial assistance before the onsite sewage system is repaired will likely speed and perhaps increase the frequency that such sewage systems are repaired. This will increase the value of associated properties.

Small Businesses: Costs and Other Effects

The proposals do not adversely affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposals do not adversely affect small businesses.

Real Estate Development Costs

The proposed regulations are unlikely to significantly affect real estate development.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.